IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5723 OF 2007

Shashidhar S. Shetty ....Petitioner
V/s
State of Maharashtra & Ors..... ....Respondents.

Mr.R.D.Soni i/by M/s.Ram & Co. for the petitioner.

Ms.V.S.Mhaispurkar, AGP for respondent Nos. 1 to 4.

CORAM: A.P.DESHPANDE, J.
4/9/07

PC:

Rule. Rule made returnable forthwith.

Taken up for final hearing by consent of both the parties.

The present petitioner is the legal heir of Shekhar Shetty who expired on 30.1.04. The petitioner applied for renewal of licence for orchestra and rejection thereof has given rise to the filing of present writ petition after dismissal of the appeal by the Appellate Authority. It is the case of the petitioner that prior to imposition of ban on dance bar the petitioner was having performance licence for dance and orchestra. However after imposition of ban on dance renewal is sought for orchestra. The application has been rejected primarily on three grounds, one that there are certain cases registered and pending against the present petitioner during the period 2001-04, two that the certificates required for the licence are not in the name of the present petitioner and

the same are in the name of deceased licence holder viz. father of the present petitioner by name Shekhar Shetty and three that there is no independent place for parking near the restaurant and as the hotel is situated on Agra road there is possibility of obstruction to traffic. In regard to first ground learned counsel for the petitioner has submitted that after registration of said offences the licence has been renewed and thus the authority cannot rely upon the pendency of cases for refusing to renew the licence. Touching the second ground it is submitted that all the certificates that are required for the licence are held by the petitioner in the name of the legal heirs of the deceased. It is categorically submitted that the names of three persons viz. two sons of the deceased and wife of the deceased are already recorded in the certificate. It appears from the impugned order that the authority was not sure about the said position in as much as it has observed in para 3 of the order that the petitioner did not remain present on the given date along with original documents and hence the authority could not verify names of legal heirs of the deceased appearing in the relevant certificates. Learned counsel for the petitioner submits that if the matter is remanded back the petitioner will remain present before the authority along with all the relevant certificates which goes to indicate that ground No.2 is non existent. In relation to last ground No.3 it is submitted that when the licence for dance and orchestra was granted at the place of

restaurant the authority had satisfied itself about sufficiency of place for parking and hence the contention is that the third ground also cannot be held out against the petitioner. It is alternatively submitted that the petitioner has a proposal to make to the concerned authority in regard to making available alternate site for parking in addition to available space. It is also submitted that the petitioner proposes to file an undertaking with the authority viz. the Commissioner of Police with regard to steps that the petitioner proposes to take for avoiding traffic congestion. Learned additional government pleader has contended that the reason for refusing the renewal of licence is that the petitioner has transferred the business in favour of some other party. This is not the ground on which renewal has been refused by the authority. It is for the first time in this writ petition that the learned additional government pleader is making said submission. As refusal of renewal is not touching the alleged transfer of business by the petitioner the same does not require any consideration. Having regard to the submissions made by the learned counsel for the petitioner I am of the view that the submissions can be properly considered by the Commissioner of Police and appropriate decision in accordance with law in regard to grant of renewal of licence can be taken by the authority. The learned Additional Government Pleader submits that the Commissioner of Police may be permitted to take assistance of traffic police to determine the question of

adequacy of parking space or suitability of alternate place suggested by the petitioner for parking. The petitioner has no objection for the authority taking assistance of the traffic police. In this view of the matter I am inclined to partly allow the writ petition and remand the matter to the Commissioner of Police for reconsideration of the application moved by the petitioner seeking renewal of licence. The Commissioner of Police shall take a decision in accordance with law after hearing the present petitioner and in the light of the proposal and undertaking that the petitioner proposes to submit before the authority. The petitioner shall approach the Commissioner of Police within two weeks from today. The Commissioner of Police shall pass appropriate orders on the application moved by the petitioner within a period of four weeks from the date of receipt of proposal and undertaking referred to above. It is made clear that if the authority wants to rely on the ground of transfer of business then in that event the authority will have to issue fresh show cause notice to the petitioner and after affording an opportunity of being heard, take appropriate decision in accordance with law. Rule made absolute in above terms.